IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 92 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BRIJESH J TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 92 of 2002

MR JT TRIVEDI for Petitioner No. 1

MS JIGNASA B TRIVEDI for Petitioner No. 1

MR BD DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/03/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. J.T. Trivedi for the petitioner-accused and ld. APP Mr. Desai for the State.

2. In this petition under Section 397 R/w Section 401 of CrPC, the petitioner-accused has challenged the judgment and order dated 20.12.2001 passed by the ld. Metropolitan Magistrate, Court No.12, Ahmedabad in N.C. Case No. 679/2000, whereby the petitioner-accused was convicted for the offences punishable under Sections 112, 115 & 117 of the M.V. Act. The trial Court, without passing any order of sentence of fine etc., has set free the petitioner on admonition by reprimanding him. As per prosecution,, the petitioner accused had parked his vehicle in "No Parking Zone".

2. Ld. counsel Mr. Trivedi has taken me through relevant part of the decision. It has been observed by the ld. Metropolitan Magistrate in the impugned judgment that "there is some substance in the say of the accused". Mr. Trivedi has further submitted that in view of clear-cut admission of P.W. 1 Mr. I.Y. Abassi (exh.4) that " it is true that the board of "No Parking" (i.e. orders not to park vehicles) on the main road did not apply to the place where the car was parked", ld. Metropolitan Magistrate ought to have acquitted the petitioner accused. It is also on record that the memo was issued on the instructions of the officer who was not actually on traffic duty. It is in the deposition of P.W.2 that relevant memo under which non- cognizable offence has been registered, was issued at the instance of PSI Shri Pathan.

3. On the other hand, ld. APP Mr. Desai has submitted that the concerned police officer was authorised to issue memo to the car parked even at the place where "No Parking" board is not installed. However, this Court is supposed to appreciate the case of prosecution on the strength of evidence led by the prosecution.

4. In my view, without going into the merits of the dispute whether memo issued was genuine or not and whether the same was issued at the instance of some higher officer, and in view of clear-cut admission and contradictions in the evidence, the ld. Metropolitan Magistrate ought not to have held the petitioner accused guilty. In absence of positive finding in favour of the prosecution, it was not legal for the ld. Metropolitan Magistrate to hold the petitioner-accused guilty. In the present case, the prosecution has failed in bringing home the charge by leading cogent and convincing evidence.

5. For the reasons aforesaid, Cri. Revision

Application is allowed. The impugned judgment and order dated 20.12.2001 passed by the ld. Metropolitan Magistrate, Court No.12, Ahmedabad in N.C.Case No. 679/2000 is hereby quashed and set aside and the petitioner accused is acquitted of the offences for which he has been convicted.

6. Rule is made absolute.
Yadi to the concerned Court.

26.3.2002 [C.K. BUCH, J]
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